



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 21 1996

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL # Z 480 246 686
RETURN RECEIPT REQUESTED

In Reply Refer To:

Grover Hankins, Esq.
Thurgood Marshall School of Law
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

EPA File No: 2R-96-R6

Re: PARTIAL ACCEPTANCE / REQUEST FOR CLARIFICATION

Dear Mr. Hankins:

This letter concerns the administrative complaint that you filed with the United States Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) on April 24, 1996, on behalf of the Jackson/Mahon Neighborhood Association (JMNA) which is largely comprised of minorities and low-income individuals residing within Lubbock County, Texas. Your complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.* (Title VI) and EPA's implementing regulations, by the City of Lubbock, Texas (City), and the Texas Natural Resources Conservation Commission (TNRCC). You requested that EPA investigate both the City and TNRCC for the alleged Title VI violations.

Under Title VI, a recipient of Federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). A complaint must meet jurisdictional requirements as described in EPA's Title VI regulations to be accepted. 40 C.F.R. § 7.120. First, it must be in writing. Second, it must describe alleged discriminatory acts that, if proven true, may violate EPA's Title VI regulations. Third, it must be timely filed. Fourth, because EPA's Title VI regulations only apply to recipients of EPA financial assistance, it must identify an EPA recipient that allegedly committed a discriminatory act.

OCR has jurisdiction over TNRCC because it receives financial assistance from the EPA. You stated that the City of Lubbock also received Federal funds from the EPA. OCR has not been able to determine whether the City received any EPA assistance. Please provide us the information you have concerning which parts of the City government received Federal assistance from EPA and when. Please provide this information within 30 days of receipt of this letter. If this information is not provided within this period, OCR will not accept the allegations pertaining to the city.

In addition, for the reasons listed below, OCR is accepting the complaint in part and requesting clarification on several other issues.

Allegations against TNRCC

“The residents are adversely impacted and will continue to be adversely impacted by emissions from the recently permitted West Texas Wilbert Vault Company plant in Lubbock County.”

The complaint states that TNRCC granted a permit exemption on November 15, 1995, to West Texas Wilbert Vault Company, in Lubbock County, Texas to produce concrete burial vaults. You allege that the minority residents of Lubbock are adversely impacted and will continue to be adversely impacted by emissions from this facility. Since this alleged discriminatory act occurred within 180 days of the filing of the complaint and ~~meets~~ the other jurisdictional criteria listed above are met, OCR accepts this allegation for investigation.

“Indeed , the State Legislature in 1991 specifically authorized creation of TNRCC to consolidate and improve environmental protection services in Texas, but JMNA believes the TNRCC is operating in essentially a very similar, if not identical discriminatory manner, as the Texas Air Control Board (TACB) and the Texas Water Commission (TWC) did before for several decades.”

The complaint also states that prior to 1991, there were two separate governmental agencies responsible for environmental protection services in Texas, the TACB and TWC. Upon authorization from the Texas Legislature, on September 1, 1993, the TACB and TWC were merged to create TNRCC. You allege that TNRCC has continued to administer basically the same policies, rules, and programs that are discriminatory to the minority residents of Lubbock, and that there have been essentially no improvements or changes in the degree of discrimination since the TNRCC came into being on September 1, 1993.

When OCR receives a complaint alleging discriminatory acts with continuing consequences, OCR considers the complaint timely if it is filed within 180 days of the last discrete discriminatory act or within 180 days of the earliest date that the complainant actually knew or reasonably should have known the acts were discriminatory, whichever is earlier. Furthermore, if the alleged violation is the recipient's failure to act, OCR considers the complaint

timely if it is filed within 180 days of the recipient's initial failure to act or within 180 days of the earliest date that the complainant actually knew or reasonably should have known the recipient's failure to act was discriminatory, whichever is later.

In order to enable OCR to complete its preliminary review of this complaint, OCR hereby requests further clarification. First, please specify which "policies, rules, and programs" of the TACB and TWC that TNRCC continues to administer that are discriminatory. Second, please identify any alleged acts taken pursuant to the identified "policies, rules, and programs". Should OCR accept this allegation for investigation, this information will be necessary to ensure the investigation is focused and efficient. Most importantly, please provide information regarding the alleged discriminatory acts that constitute a continuing violation, when it first occurred, and when you first became aware of the said acts. (e.g., date of issuance of an alleged discriminatory policy or an act taken pursuant to that policy). Third, OCR requests information as to how and why you became aware that the said acts were discriminatory and if you ever notified TNRCC of the alleged discriminatory acts. If you informed TNRCC of the alleged discriminatory acts, please provide any response you received from TNRCC.

Please provide this information within 30 days of receipt of this letter. If this information is not provided within this period, OCR will not accept this allegation for investigation.

General Allegation

"Disparate industrial pollution impacts and locations of people of color populations: Lubbock County, Lubbock, Texas."

The complaint states that various emissions have "bombarded residents living adjacent to and within the proximate vicinity of the polluting facilities in Lubbock and Lubbock County". You allege that this pollution disparately impacts minority communities in both the City of Lubbock and Lubbock County. Please clarify whether you are alleging the City or TNRCC, or both, are contributing to the disparate pollution impacts in Lubbock and Lubbock County. Also, please provide additional information about the discriminatory acts and the dates that those acts occurred.

In order to enable OCR to complete its preliminary review of this complaint, please provide the requested information within 30 days of receipt of this letter. If this information is not provided within this period, OCR will not accept this allegation for investigation.

Allegation Against the City

"City of Lubbock created an industrial district immediately adjacent to Northeast Lubbock neighborhoods extensively populated by the people of color."

You state that the Mayor of Lubbock and City Council approved and created an industrial

development district along the northeast side of Lubbock through the use of territorial jurisdictions, deed restrictions, and other incentives. You allege that the City officials were fully aware when creating this industrial district that the majority of the people residing in Northeast Lubbock neighborhoods were people of color. You further allege that as a result of these activities, the minorities residing in this district have suffered and continue to suffer from the present effects of past discrimination.

When OCR receives a complaint alleging discriminatory acts with continuing consequences, OCR considers the complaint timely if it is filed within 180 days of the last discrete discriminatory act or within 180 days of the earliest date that the complainant actually knew or reasonably should have known the acts were discriminatory, whichever is earlier. Furthermore, if the alleged violation is the recipient's failure to act, OCR considers the complaint timely if it is filed within 180 days of the recipient's initial failure to act or within 180 days of the earliest date that the complainant actually knew or reasonably should have known the recipient's failure to act was discriminatory, whichever is later.

In order to enable OCR complete its preliminary review of this complaint, OCR hereby requests further clarification. First, please specify which territorial jurisdictions, deed restrictions, and other incentives the Mayor of Lubbock and City Council used in approving and creating an industrial development district that you allege was discriminatory. Second, please identify the party that performed the alleged discriminatory act(s) and the date(s) that act(s) occurred. Should OCR accept this allegation for investigation, this information will be necessary to ensure the investigation is focused and efficient. Third, OCR requests information as to how and why you became aware that the said acts were discriminatory and if you ever notified the City of the alleged discriminatory acts. If you informed the City of the alleged discriminatory acts, please provide any response you received from the City.

Please provide the requested information within 30 calendar days of receipt of this letter to OCR. If this information is not provided within this period, OCR will not accept this allegation for investigation.

Additional Allegations Against TNRCC and the City

“JMNA alleges that both the TNRCC and City of Lubbock: 1) discriminate against minority residents of Texas and Lubbock, respectively, by ignoring their environmental protection and public health needs in violation of the Title VI of the Civil Rights Act of 1964; and 2) have engaged in a pattern of systematic discriminatory conduct through: concealment of information, circumvention of laws, indifference to environmental regulations and responsibilities, and participation in a conspiracy to deny minorities, including minorities and low-income citizens, equal protection of the law.”

You allege that both TNRCC and the City's health programs have similar problems and

effects. They both provide health and environmental protection services that reflect disregard for the health and environmental protection needs of people of color and poor residents. You also allege that both TNRCC and the City have engaged in a pattern of systematic discriminatory conduct through concealment of information, circumvention of laws, indifference to environmental regulations and responsibilities, and participation in a conspiracy to deny minorities equal protection of the law.

When OCR receives a complaint alleging discriminatory acts with continuing consequences, OCR considers the complaint timely if it is filed within 180 days of the last discrete discriminatory act or within 180 days of the earliest date that the complainant actually knew or reasonably should have known the acts were discriminatory, whichever is earlier. Furthermore, if the alleged violation is the recipient's failure to act, OCR considers the complaint timely if it is filed within 180 days of the recipient's initial failure to act or within 180 days of the earliest date that the complainant actually knew or reasonably should have known the recipient's failure to act was discriminatory, whichever is later.

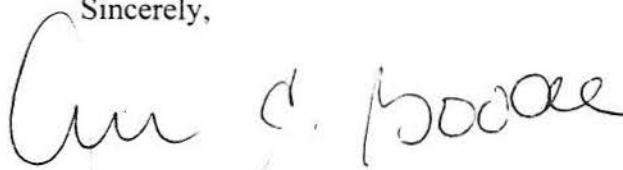
After reviewing your complaint earlier, OCR found that it was unclear whether these allegations meet the jurisdictional requirements mentioned above. Therefore, in a letter dated May 6, 1997 (copy enclosed), OCR requested you to provide further clarification, within 30 calendar days of receipt of that letter. To date however, OCR has not received a response to that letter. In order to enable OCR complete its preliminary review of this complaint, OCR hereby requests you to first identify instances where the environmental protection and public health needs of an identifiable group were being ignored by either TNRCC or the City. Second, please be more specific by identifying the law or laws being circumvented; how such laws may have been circumvented; the information being concealed; the environmental regulations and responsibilities that were being treated indifferently; and the facts that support the allegations of a conspiratorial plan. Should OCR accept this allegation for investigation, this information will be necessary to ensure the investigation is focused and efficient. Third, OCR requests information as to how, when, and why you became aware that the said acts were discriminatory and if you ever notified TNRCC or the City of the alleged discriminatory acts. If you informed TNRCC or the City of the alleged discriminatory acts, please provide any response you received from them.

Accordingly, within 30 days of receipt of this letter, please provide the requested information to OCR. If this information is not provided within this period, OCR will not accept these allegations for investigation.

In summary, OCR has accepted one allegation for investigation and is requesting you submit additional information within 30 calendar days of receipt of this letter on the other referenced allegations

If you have any questions, please contact Mr. Mirza P. Baig in OCR by phone at (202) 260-3018, by e-mail at baig.mirza@epamail.epa.gov, or by mail to the U.S. EPA, Office of Civil Rights (Mail Code 1201), 401 M St., S.W., Washington, D.C. 20460.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann E. Goode".

Ann E. Goode
Director

Enclosure:

cc: Honorable Mayor Sitton
City of Lubbock
P. O. Box 2000
Lubbock, TX 79457

Robert J. Huston, Chairman
Texas Natural Resource Conservation Commission
P. O. Box 13087
Austin, Texas 78711

Gary S. Guzy, General Counsel
Office of General Counsel (MC 2310A)

Rafael DeLeon, Acting Associate General Counsel
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